

## REMARKS

Applicants respectfully request reconsideration of this application as amended. Claims 1-4, 11-14 and 21-24 were amended. Claims 5-10, 15-20 and 25-30 were cancelled without prejudice. New claims 31-34 were added. Therefore, claims 1-4, 11-14, 21-24 and 31-34 are now presented for examination.

### Oath/Declaration

Applicants respectfully submit that a signed and dated Oath/Declaration, in compliance with 37 CFR 1.66 and 1.68, was filed on October 23, 2000. A copy of the Oath/Declaration, filed on October 23, 2000, is attached herewith for the Examiner's review.

### Drawing Corrections

Figures 1, 2, 5, 6, 9, and 13 were objected to by the Examiner for failing to comply with 37 CFR 1.84(p)(4). Applicants propose herein amendments to the objected drawing and/or the corresponding description in the Specification to address the Examiner's concern. Applicants will file formal drawings at the time of allowances of the application, if necessitated.

With regard to figures 1 and 2, new figures were submitted herewith to replace the originally submitted figures 1 and 2 to overcome the Examiner's objection. Amendments to figure 1 include removing item "110" and the line pointing to the item "110". Amendments to figure 2 include adding "Package 210" and a rectangular box, which Package 210 represents, surrounding items 220, 225, and 230.

With regard to figures 5, 6, 9, and 13, amendments to the corresponding descriptions in the Specification were made to overcome the Examiner's objection.

Accordingly, Applicants respectfully request the Examiner's approval with regard to the proposed changes to the drawings and the corresponding descriptions in the Specification.

### **35 U.S.C. §112 Rejection**

Claims 5, 15 and 25 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants propose canceling claims 5, 15 and 25 and other claims (6-10, 16-20 and 26-30) that directly or indirectly depended on claims 5, 15 and 25. Applicants respectfully request the Examiner to accept the proposed cancellation, and submit that the cancellation of the claims overcomes the rejection under 35 U.S.C. § 112, second paragraph.

With regard to the Examiner's question in reference to page 16, lines 16 of the Specification, Applicants respectfully submit that on page 16, lines 16-18 have been amended (see Amendments to the Specification). On page 16, lines 16-17, as amended, refer, generally, to "annotations," as they relate to "linked list of data structures" (Specification, page 6, lines 16-17). Furthermore, Figures 10-14 are provided to illustrate the handling of such linked lists "as it relates to annotations" (see Specification, page 16, lines 17-18; see also Figures 10-14).

**35 U.S.C. §102 Rejection,**

**Adl-Tabatabai**

**Hölzle et al.**

Claims 1-4, 11-14, 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Adl-Tabatabai, U.S. Patent No. 6,170,083. Claims 1, 2, 11-12 and 21-22 stand rejected under 35 U.S.C. 102(e) as being anticipated by Hölzle et al., U.S. Patent No. 5,970,249 (“Hölzle”). In contrast, claim 1, in pertinent part, recites, “installing a program onto a target machine, the program having intermediate representation . . . and recompiling the intermediate representation to optimize the program when the current profile data in comparison with the initial profile data has exceeded a predetermined threshold (emphasis provided).

Adl-Tabatabai discloses “[w]hile compiling, the method introduces *instrumentation code* into the object code that performs path profiling” (Abstract). Stated differently, Adl-Tabatabai discloses introducing *instrumentation code* into the code to be optimized and “determines which execution paths are executed most often by *counting the number of times* each possible execution path is executed” (Abstract). Applicants respectfully submit that *introducing instrumentation code* into the object code is not the same as having a program having intermediate representation as recited by claim 1. Adl-Tabatabai does not teach or reasonably suggest a program having intermediate representation and recompiling the intermediate representation to optimize the program as recited by claim 1.

With regard to Hölzle, it discloses dynamic compilation of identified methods “referenced in *one or more lists*” and “the lists may be prioritized to facilitate the

compilation of the highest priority methods first . . . [and] the compilation is *allowed to continue for a predetermined period of time* . . . [and] [i]f the compilation is not completed during the predetermined period of time, then the *compilation is aborted*” (col. 2, lines 35-50). First, Hölzle does not teach or suggest a program having intermediate representation and recompiling the intermediate representation to optimize the program as recited by claim 1. Second, the threshold referred to in Hölzle relates to a *predetermined period of time* and to *aborting the compilation* if not completed during the *predetermined period of time* (col. 2, lines 46-50). Applicants respectfully submit that this is not the same as “comparing the current profile data with the initial profile data; and recompiling the intermediate representation to optimize the program when the current profile data in comparison with the initial profile data has exceeded a predetermined threshold” as recited by claim 1.

Accordingly, for at least the reasons set forth above, Applicants respectfully request that the rejection to claim 1 and its dependent claims be withdrawn.

With regard to independent claims 11 and 21, they contain limitations similar to those of claim 1. Accordingly, Applicants respectfully request that the rejection to claims 11 and 21 and their dependent claims be withdrawn.

With regard to new claim 31, it contains limitations similar to those of claim 1. Accordingly, Applicants respectfully request that the rejection to claim 31 and its dependent claims be withdrawn.

**35 U.S.C. §103 Rejection,**

**Adl-Tabatabai and Hölzle et al.**

Claims 6-10, 16-20, 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Adl-Tabatabai, U.S. Patent No. 6,170,083 and Hölzle et al., U.S. Patent No. 5,970,249 ("Hölzle").

With regard to claim 6-10, 16-20, and 26-30, they are dependent on independent claims 1, 11, and 21, respectively. Accordingly, Applicants respectfully request that the rejection to claims 6-10, 16-20, and 26-30 be withdrawn.

**Conclusion**

Applicants respectfully submit that claims as amended are now in condition for allowance. Accordingly, Applicants respectfully request that the rejections be withdrawn and the application be allowed.